



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-881]

#### **Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Results, Notice of Amended Final Results of the Antidumping Duty Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 13, 2022, the U.S. Court of International Trade (the Court) issued a final judgment in *Hyundai Steel Co. et al. v. United States*, Court No. 19-00099, Slip. Op. 21-46 (*Hyundai II*), sustaining the U.S. Department of Commerce's (Commerce) redetermination pursuant to the remand pertaining to the administrative review of the antidumping duty order on certain cold-rolled steel flat products from the Republic of Korea. Commerce is notifying the public that the Court's final judgment in this case is not in harmony with Commerce's final results of the administrative review, published on May 24, 2019. Commerce is amending the final results with respect to the weighted-average dumping margin assigned to Hyundai Steel Company (Hyundai Steel) and has rescinded its review of one non-examined company.

**DATES:** Applicable May 13, 2022.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4475.

## SUPPLEMENTARY INFORMATION:

### Background

In the *Final Results*,<sup>1</sup> Commerce identified discrepancies between product codes and product specifications reported by Hyundai Steel for certain sales.<sup>2</sup> As a result, Commerce determined that Hyundai Steel had provided inconsistent product specification data for observations of certain U.S. sales within various control numbers.<sup>3</sup> Because of the inconsistent product specification information, Commerce also determined that it could not confirm that Hyundai Steel accurately reported control number fields for the sales corresponding with the observations in question and all other sales of the same control number. As a result, Commerce was unable to match the control numbers of the affected U.S. sales to the appropriate control numbers in the Korean home market.<sup>4</sup> Accordingly, in the *Preliminary Results* and *Final Results*, Commerce relied on facts available with an adverse inference (AFA) by applying the highest transaction-specific margin to the inconsistent sales observations of the affected control numbers created by Hyundai Steel.<sup>5</sup>

In *Hyundai I*, the Court remanded Commerce's reliance on AFA.<sup>6</sup> The Court held that the relevant statement in Commerce's June 18, 2018 supplemental questionnaire was "broadly drawn" and did not satisfy the notice requirement under section 782(d) of the Tariff Act of 1930, as amended (the Act), because Commerce "failed to identify the nature of the alleged 'deficiency' in {Hyundai Steel's} response with any specificity."<sup>7</sup> Further the Court explained that the word "accuracy" in the supplemental questionnaire did not alert Hyundai Steel that its

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<sup>1</sup> See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24083 (May 24, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

<sup>2</sup> *Id.* at Comment 2.

<sup>3</sup> See Memorandum, "Analysis for the Preliminary Results of the Antidumping Duty Administrative Review Certain Cold Rolled Steel Flat Products from the Republic of Korea: Hyundai Steel Company," dated October 3, 2018 (Hyundai Steel Preliminary Analysis Memorandum), at 5-6.

<sup>4</sup> See *Final Results* IDM at Comment 2.

<sup>5</sup> *Id.*; see also Hyundai Steel Preliminary Analysis Memorandum at 5-6.

<sup>6</sup> See *Hyundai Steel Co. et al. v. United States*, 518 F. Supp. 3d 1309, 1324-28, 1333 (CIT 2021) (*Hyundai I*).

<sup>7</sup> *Id.*, 518 F. Supp. 3d at 1326.

specification data were deficient.<sup>8</sup> The Court also rejected the argument that Commerce's reliance on facts available in the immediately preceding investigation justified its use of facts available in the instant review.<sup>9</sup> Therefore, the Court ordered Commerce to identify the sales and control numbers containing a discrepancy between the product code and product specifications, to clearly describe the nature of the deficiency, to provide Hyundai Steel with an opportunity to remedy the deficiency, and to reconsider whether facts available is warranted.<sup>10</sup>

Based on *Hyundai I*, on June 2, 2021, we issued a supplemental questionnaire concerning Hyundai Steel's U.S. sales of products falling within the control numbers in question.<sup>11</sup> On June 16, 2021, Hyundai Steel filed its response to our supplemental questionnaire.<sup>12</sup> Based on Hyundai Steel's response to Commerce's Remand Supplemental Questionnaire, Commerce accepted the methodology that Hyundai Steel employed to report its sales by control number and no longer relied on AFA.

Additionally, in the underlying administrative review, the petitioners<sup>13</sup> requested a review of 16 companies, including "Company A," an affiliate of Hyundai Steel.<sup>14</sup> Although the petitioners filed a timely withdrawal of their review request for certain companies, the petitioners did not include Company A in their withdrawal request.<sup>15</sup> In the *Preliminary Results*, Commerce assigned the all-others rate to Company A.<sup>16</sup> Subsequently, in a case brief, U.S. Steel for the first

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<sup>8</sup> *Id.*, 518 F. Supp. 3d at 1326-27.

<sup>9</sup> *Id.*, 518 F. Supp. 3d at 1327 (citing *Hyundai Steel Co. v. United States*, 319 F. Supp. 3d 1327 (CIT 2018); and *Hyundai Steel Co. v. United States*, 365 F. Supp. 3d 1294 (CIT 2019)).

<sup>10</sup> *Id.* at 1328, 1333.

<sup>11</sup> See Commerce's Letter, "Request for Additional Information: Hyundai Steel v. United States Slip Op. 21-47, Court No 19-00099," dated June 2, 2021 (Remand Supplemental Questionnaire).

<sup>12</sup> See Hyundai Steel's Letter, "Remand Order of the United States Court of International Trade in Hyundai Steel Co. et al. v. United States (Court No. 19-00099): Hyundai Steel Company's Supplemental Questionnaire Response," dated June 16, 2021 (Hyundai Steel Remand Supplemental Response).

<sup>13</sup> The petitioners in this proceeding are ArcelorMittal USA LLC; AK Steel Corporation; Nucor Corporation; Steel Dynamics, Inc.; and United States Steel Corporation (U.S. Steel) (collectively, petitioners).

<sup>14</sup> See Petitioners' Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea – Petitioners' Request for Administrative Review," dated October 2, 2017. Company A is identified on the record. See Petitioners' Letter, "Case Brief to United States Steel Corporation, ArcelorMittal USA, Nucor Corporation, and AK Steel Corporation," dated November 20, 2018 (Petitioners' Case Brief); and Hyundai Steel's Letter, "Rebuttal Brief of Hyundai Steel Company," dated November 28, 2018.

<sup>15</sup> See Petitioners' Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea – Petitioners' Partial Withdrawal of Administrative Review Request," dated February 14, 2018.

<sup>16</sup> See *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping*

time requested that Commerce either rescind its review of Company A or collapse Company A with Hyundai Steel.<sup>17</sup> The petitioners' request to withdraw the review for Company A was filed after the 90-day deadline established in 19 CFR 351.213(d)(1). In the *Final Results*, Commerce continued to apply the all-others rate to Company A, and we declined to rescind its review or to collapse the company with Hyundai Steel.<sup>18</sup> Commerce did, however, determine that Company A was neither a producer nor an exporter of subject merchandise.<sup>19</sup>

In *Hyundai I*, the Court sustained Commerce's determination that the petitioners' request to rescind review of Company A was untimely.<sup>20</sup> The Court held that U.S. Steel failed to request an extension and did not satisfy the prerequisites for asking that Commerce rescind its review.<sup>21</sup> Nevertheless, the Court concluded that "assigning the all-others rate to a non-producer or exporter violated the {Act}."<sup>22</sup> Specifically, although the petitioners had earlier identified Company A as an exporter or producer of subject merchandise, once Commerce determined that Company A was neither, the Court explained that Commerce "need not have waited for U.S. Steel to ask for rescission to find that it could not determine a rate for Company A."<sup>23</sup> The Court further determined that the Act "does not empower Commerce to assign a rate to a freight company."<sup>24</sup> Thus, the Court determined that U.S. Steel's untimely rescission request was not consequential. Based on the foregoing, the Court directed Commerce to rescind its review with respect to Company A.<sup>25</sup>

On September 24, 2021, Commerce filed its *Redetermination*.<sup>26</sup> In the *Redetermination*, Commerce: (1) accepted the control number reporting employed by Hyundai Steel and no longer

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*Duty Administrative Review and Partial Rescission of Review; 2016-2017*, 83 FR 51661, 51662 (October 12, 2018) (*Preliminary Results*).

<sup>17</sup> See Petitioners' Case Brief at 2-7.

<sup>18</sup> See *Final Results* IDM at Comment 8.

<sup>19</sup> *Id.*

<sup>20</sup> See *Hyundai I*, 518 F. Supp. 3d at 1331.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, 518 F. Supp. 3d at 1332.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, 518 F. Supp. 3d at 1333.

<sup>26</sup> See *Hyundai Steel Co., et al. v. United States*, Court No. 19-00099, Slip. Op. 21-47 (CIT April 27, 2021), Final Results of Redetermination Pursuant to Court Remand, dated September 24, 2021 (*Redetermination*).

relied on facts available with or without an adverse inference for transactions that Commerce had previously assigned AFA; and (2) rescinded review of Company A.<sup>27</sup>

On May 13, 2022, the Court sustained Commerce’s *Redetermination*, and entered a final judgment.<sup>28</sup>

#### Timken Notice

In its decision in *Timken*,<sup>29</sup> as clarified by *Diamond Sawblades*,<sup>30</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s May 13, 2022 judgment sustaining the *Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*. Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

#### Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to Hyundai Steel for the period March 7, 2016, through August 31, 2017.

Commerce is also rescinding its review of Company A. The revised rate for Hyundai Steel is as follows:

Producer/Exporter	Weighted Average Dumping Margin (Percent)
Hyundai Steel	1.82 percent

#### Cash Deposit Requirements

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<sup>27</sup> *Id.*

<sup>28</sup> See *Hyundai Steel Co. et al. v. United States*, Court No. 19-00099, Slip. Op. 22-46 (CIT May 13, 2022) (*Hyundai II*).

<sup>29</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>30</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Because Commerce has issued results for Hyundai Steel for periods subsequent to the instant March 7, 2016, through August 31, 2017 period of review,<sup>31</sup> the cash deposit rate for Hyundai Steel is unchanged as a result of this *Timken Notice*.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: May 20, 2022.

**Lisa W. Wang,**  
*Assistant Secretary for Enforcement and Compliance.*

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<sup>31</sup> See, e.g., *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019-2020*, 87 FR 15371 (March 18, 2022).